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OGC 69-1837

25 September 1969

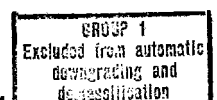
MEMORANDUM FOR THE RECORD

SUBJECT: Chesapeake & Potomac Telephone Company Surcharge:
Arlington County Ordinance

1. By memorandum to Chief, Logistics Services Division/OL, dated 7 February 1969 (Attachment 1), Chief, Telephone Facilities Branch, LSD, set out the details of the initial C & P Telephone Co. - CIA contact concerning the subject county ordinance and the resultant telephone surcharge. On 18 February C & P confirmed its position in writing (Attachment 2) addressed to [] Chief, Telephone Facilities Branch. On 6 March the Director of Finance responded to the inquiry of the Director of Logistics after having sought the advice of CCS and OGC (Attachment 3), and directed that the surcharge be deducted from the monthly telephone bill. 25X1 25X1

25X1 2. During the last week of August 1969, Ronald Roessler [] with the General Counsel, C & P Telephone Company, called the undersigned and raised the subject matter. He advised the undersigned of the relevant county ordinance and the tariff provisions (Attachment 4) and his discussions with Curtis L. Wagner, Jr., Chief, Regulatory Law Division, JAG, Department of the Army. The DOD position is formally stated in correspondence to C & P, dated 27 March 1969 (Attachment 5), and declares the Government to be immune from payment of the surcharge. Roessler advised that DOD has a special contract with C & P which requires exhaustive administrative procedures in any dispute, before court proceedings can be initiated, and therefore, C & P is considering going to court against another Government agency.

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SECRET

Roessler indicated that the Agency, [REDACTED] might be C & P's choice as defendant in any legal proceeding. He further cited 45 Comp.Gen. 192 and Alabama v. King & Boozer, 314 U.S. 1, 86 L. Ed. 3 (1941) as supporting C & P's position, and requested that we review the matter and advise him accordingly.

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3. Subsequently, the undersigned by telecon discussed the subject with Wagner at DOD and Marvin Morse, General Counsel, GSA (185-5365). DOD's position remains as noted above. GSA is not paying the surcharge and appeared to be following DOD's lead rather than making an independent judgment on the facts and the applicable law. The undersigned cited the above legal precedent to Morse and suggested an opinion to the effect that C & P's case appears to be supported by this precedent. Morse indicated his office would review the cited cases before arriving at any final determination.

4. The undersigned has reviewed the legal precedent cited by Roessler and also that cited by DOD in its correspondence to C & P. As a result of this summary review, the undersigned is of the persuasion that C & P, on balance, has the stronger case. Attachment 6 is a recent decision of the U.S.D.C., Southern District, Mississippi, forwarded by Roessler as further support of the C & P legal case.

5. On 17 September the undersigned by telecon advised Roessler that in our view GSA was the principal Government entity involved in this matter, that to our knowledge it is reviewing the matter and has not yet arrived at any final decision. Inasmuch as our involvement is minimal (the surcharge to the Agency amounts to \$4.06 a month), we intend for the time being to defer to those Government agencies which have the substantial tax claims to consider. Roessler seemed to understand this position and we did not discuss the merits of the legal positions asserted. Roessler did suggest, however, that in the event C & P appears ready to initiate legal action against the Agency, he will alert the undersigned.

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[REDACTED]
Office of General Counsel

Attachments 1-6

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OGC:RLB:sab

Distribution:

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1 - RLB Signer

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